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Letter dated 3 November 2011 from the Secretary-General addressed to the President of the Security Council

Pursuant to Security Council resolution 1031 (1995), I have the honour to transmit the fortieth report on the implementation of the Peace Agreement on Bosnia and Herzegovina, covering the period from 21 April to 15 October 2011, which I received from the High Representative for Bosnia and Herzegovina (see annex).

I should be grateful if you would bring the report to the attention of the members of the Security Council.

(*Signed*) **BAN** Ki-moon

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Annex

Letter dated 2 November 2011 from the High Representative for Bosnia and Herzegovina addressed to the Secretary-General

Pursuant to Security Council resolution 1031 (1995), in which the Council requested the Secretary-General to submit to it reports from the High Representative in accordance with annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina and the Conclusions of the London Peace Implementation Conference of 8 and 9 December 1995, I herewith present to you the fortieth report of the High Representative. I would ask for this report to be distributed to the members of the Security Council for their consideration.

This is my sixth report to the Secretary-General since assuming the post of High Representative for Bosnia and Herzegovina and European Union Special Representative on 26 March 2009. The present report covers the period from 21 April to 15 October 2011.

Should you or any Council member require any information beyond what is provided in the attached report or have any questions regarding its contents, I would be pleased to provide you with it.

(*Signed*) Valentin **Inzko**

Enclosure

Fortieth report of the High Representative for Bosnia and Herzegovina

21 April-15 October 2011

Summary

This report covers the period from 21 April to 15 October 2011. On 1 September, I formally turned over my duties as European Union Special Representative to Peter Sørensen, with whom I am cooperating closely. The consolidation of the European Union presence in Bosnia and Herzegovina represents a welcome step forward by the European Union to assume greater responsibility in guiding the reform process in Bosnia and Herzegovina in relation to the country's accession to the European Union. It also means that I will now be able to focus my energies solely on my mandate under annex 10 of the General Framework Agreement for Peace, including addressing ongoing challenges to the Agreement.

More than one year after the general elections of October 2010, Bosnia and Herzegovina remains without a new State-level government, a fact which both reflected and contributed to the ongoing deterioration of the political situation during the reporting period. In the absence of agreement on a 2011 budget, the State institutions have been funded under a restricted temporary financing mechanism since January. In this context, international credit-rating agencies downgraded the country's outlook, specifically citing the negative political situation. In its annual progress report on Bosnia and Herzegovina, the European Commission also noted the country's political problems.[a] On the economic front, registered unemployment at the end of June 2011 was estimated at approximately 43 per cent of the workforce, while foreign direct investments in the first half of 2011 decreased by 19.5 per cent over the same period in 2010.

During the reporting period, legal and political actions from Republika Srpska challenging Bosnia and Herzegovina State-level institutions, competencies and laws, and the authority of the High Representative under the General Framework Agreement and relevant resolutions of the Security Council have continued, as have other activities running contrary to the Agreement, in particular in relation to annexes 2, 4 and 10. As I outlined in my briefing to the Security Council on 9 May 2011, the Republika Srpska National Assembly adopted conclusions in April and a decision to hold a referendum on the decisions of the High Representative, including those establishing the Bosnia and Herzegovina Court and Prosecutor's Office, which formally disregard and/or reject the principles established under annex 10 and annex 4 of the Agreement, and thereby constitute a breach of the Dayton Agreement. Although the Republika Srpska National Assembly's adoption on 13 April of a referendum decision was repealed on 1 June, the controversial conclusions of the same date — many of which have not been explicitly repealed and remain problematic — have continued to influence Republika Srpska policies vis-à-vis the institutions of Bosnia and Herzegovina and the High Representative.

The use of inflammatory nationalistic rhetoric continued, including further statements by officials of the Republika Srpska in support of State dissolution and chauvinistic comments directed against other ethnic groups. In this regard, I would like to express my deep concern about recent public statements that challenge the statehood of Bosnia and Herzegovina by characterizing the country as a "state union" [*drzavna zajednica*], ignoring also the fact that Bosnia and Herzegovina was admitted to the United Nations as a Member State on 22 May 1992, together with Croatia and Slovenia. These statements undermining the constitutional arrangements provided for under the General Framework Agreement need to be taken seriously, especially in the light of other actions directly challenging the Agreement as set out in this and previous reports.

While the arrest on 26 May of General Ratko Mladic and his transfer on 31 May to the International Tribunal for the Former Yugoslavia in The Hague brought good news, political leaders in the Republika Srpska continued to challenge the rulings of the Tribunal and the International Court of Justice that qualified the massacre of Bosniaks who had sought refuge in the United Nations-protected area of Srebrenica in July 1995 as genocide.

Some Federation politicians have also used unwelcome rhetoric, and some leaders of HDZ BiH and HDZ 1990 continue to press for a third entity with a Croat majority and have revived the Croat National Council. The two leading Croat parties in Bosnia and Herzegovina continue to question the legality and legitimacy of the incumbent Federation government, demanding that it be reshuffled to include them, as the "sole legitimate representatives of the Croat people". In the Federation, some Bosniak political leaders escalated their rhetoric in response to statements by the Republika Srpska leadership and warned of possible conflict, were there to be an attempt to divide the country. The former Federation President, now a delegate in the Bosnia and Herzegovina Parliamentary Assembly, also made offensive statements, appearing to question the suitability of prosecutors from ethnically mixed marriages to carry out their functions.

In spite of tensions and controversy surrounding its formation, the Federation government has functioned well during the reporting period. Three seats in the entity's Constitutional Court remain vacant, preventing the court from ruling on vital national interest cases submitted to it, thereby affecting the protection of constituent peoples in the Federation. In addition, the Federation continues to be burdened by a large, expensive and multilayered government apparatus.

None of the outstanding items among the five objectives and two conditions necessary for the closure of the Office of the High Representative was fulfilled during this reporting period. Owing to the continuing stalemate over government formation following the elections of 3 October 2010, the old Council of Ministers continues in a caretaker capacity. This stalemate has had a negative impact on the ability to address long-needed reforms, including those needed for progress in Euro-Atlantic integration.

Through its continued presence, the European Union military mission in Bosnia and Herzegovina has continued to reassure citizens that the country remains safe and secure despite the difficult political situation. The High Representative supports the extension of the executive mandate under annexes 1 and 2 of the General Framework Agreement.

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[a] "Overall, little progress was made by Bosnia and Herzegovina in improving the functionality and efficiency of all levels of government. One year after the general elections, a State-level Council of Ministers remains to be appointed. The political representatives lack a shared vision on the direction to be taken by the country. An effective coordination mechanism between the State, the Entities and Brcko District remains to be established as a matter of urgency regarding EU matters and the harmonisation of EU related legislation." (Commission Staff Working Paper, Bosnia and Herzegovina 2011 Progress Report.)

I. Introduction

1. This is my sixth report to the Secretary-General since assuming the post of High Representative for Bosnia and Herzegovina. It provides a narrative description of progress made towards attaining the goals outlined in previous reports, registers factual developments, logs relevant citations relating to the reporting period, and provides my assessment of mandate implementation in key areas, including the objectives and conditions which must be met before the Office of the High Representative can close. I have focused my efforts on facilitating progress in these areas, in line with my primary responsibility to uphold the civilian aspects of the General Framework Agreement for Peace, while also facilitating progress towards Euro-Atlantic integration. Regrettably, a substantial part of my efforts has been dedicated to addressing negative developments, in particular actions taken that challenge the Agreement and undermine the institutions of Bosnia and Herzegovina.

II. Political update

General political environment

2. The overall political environment was marked by stagnation, due in large part to the inability of the six largest political parties to form a State-level government. Opposition from the entities — in particular the Republika Srpska — continued to prevent the adoption of an adequate State-level budget for 2011. Consequently, State institutions have operated under restricted temporary financing since 1 January 2011, which has limited their capacity as well as their ability to meet their obligations.

3. A ray of hope emerged in September when the leaders of six parties (SDP, SNSD, SDA, SDS, HDZ BiH and HDZ 1990) finally began to engage in serious negotiations on government formation and the adoption of reforms to unlock progress towards European Union and NATO membership. The apparent readiness on the part of party leaders to consider backing off from maximalist positions in the direction of compromise solutions was a welcome change, but has so far not delivered concrete results.

Decisions of the High Representative during the reporting period

4. In the wake of the arrest and transfer of General Ratko Mladic to the International Tribunal for the Former Yugoslavia, I lifted all Tribunal-related decisions enacted by my predecessors on 10 June. These included bans on 58 individuals, orders blocking the accounts of 34 individuals, and a requirement of the SDS party to provide the Office of the High Representative with monthly financial reports.

Five objectives and two conditions for the closure of the Office of the High Representative

5. The Bosnia and Herzegovina authorities made no substantive progress during the reporting period towards meeting the State property objective. As noted in my previous report, I suspended the application of the Law on the Status of State Property Situated in the Territory of Republika Srpska and under the Disposal Ban (Republika Srpska State Property Law) pending a review of its constitutionality

before the Bosnia and Herzegovina Constitutional Court. On 15 July, the Constitutional Court announced that it will convene a public hearing in November regarding the Republika Srpska State Property Law, which was challenged in January by the Deputy Chair of the Bosnia and Herzegovina House of Peoples.

6. On 22 August, the Bosniak member of the Bosnia and Herzegovina Presidency submitted a request to the Bosnia and Herzegovina Constitutional Court to review the constitutionality of the Republika Srpska Law on Cadastre. As noted in my previous report, the Republika Srpska Law on Cadastre has been the subject of some public criticism and continuing legal challenges since its adoption by the Republika Srpska National Assembly in February. The application alleges, inter alia, that the law allows the Republika Srpska to usurp the property rights of State institutions and non-resident owners. On 23 September the Constitutional Court adopted a decision on an interim measure suspending the law pending the final decision of the Court. In response, on 26 September, the Republika Srpska government adopted the Decree on the Maintenance of Immovable Property Records and Rights to Immovable Property, which directs the Republika Srpska authorities to continue registering property rights pursuant to various Republika Srpska laws, including the Law on Cadastre, and thereby circumvents the Constitutional Court's interim measure. This puts the decree in direct violation of the Bosnia and Herzegovina Constitution, which states that decisions of the Constitutional Court are final and binding.

7. On 6 October, the Bosniak member of the Bosnia and Herzegovina Presidency applied anew to the Constitutional Court, alleging that the above-mentioned decree violates the Court's decision suspending the Republika Srpska Law on Cadastre. However, on the same day, the Republika Srpska government proposed new legislation — the Republika Srpska Law on Survey and Cadastre — which eliminates many of the controversial provisions under challenge before the Constitutional Court and, upon entry into force, would supersede the controversial Law on Cadastre. The Republika Srpska National Assembly adopted the new legislation in urgent procedure on 13 October, but it remains to be seen whether its entry into force will be halted or delayed in the Republika Srpska Council of Peoples by a Bosniak objection on grounds of vital national interest. The new law, following its entry into force, could lead to a decision of the Bosnia and Herzegovina Constitutional Court to terminate proceedings challenging the Republika Srpska Law on Cadastre.

8. The Bosnia and Herzegovina Commission for State Property met twice during the reporting period, but did not discuss draft legislation or sustainable apportionment of State property. Substantive discussion on these issues has been effectively suspended until the Bosnia and Herzegovina Constitutional Court rules on the pending challenge to the constitutionality of the Republika Srpska State Property Law. The Commission has focused on granting exemptions from the temporary prohibition on transfers of State property. In its letter of 29 September, the Commission formally requested that I amend my Order of 5 January to allow the Commission to grant exemptions to the temporary ban on ownership transfers of State property situated in Republika Srpska. I have not amended my Order; and while exemptions from the State property transfer ban remain permissible at other levels of authority in Bosnia and Herzegovina, no exemptions were granted during the reporting period.

9. Various parties have discussed aspects of an agreement addressing the defence property objective, but the discussions have thus far proved inconclusive.

10. Neither the Brcko District Supervisor nor I are able yet to conclude that all obligations under the Brcko Final Award have been fulfilled. Republika Srpska authorities continue to send ambiguous, and potentially problematic, signals regarding various commitments under the Brcko Final Award, including the question of the territorial boundaries of the Brcko District. This also raises questions about its compliance with obligations under annex 4 and annex 2 to the General Framework Agreement. The Office of the High Representative continues to seek a dialogue with Republika Srpska officials to resolve outstanding issues related to the territorial and other obligations stemming from the Final Award and other legal acts. To date, the Republika Srpska authorities have declined to provide assurances that they will fully honour annex 2 and all aspects of the Brcko Final Award. The Federation provided such assurances early in 2011.

11. Some other entity obligations to the Brcko District are not yet fully met, including resolution of the issue of entity citizenship and voting rights for residents of the District. On a more positive note, a sound legal basis for the supply of electricity to the District could be complete once permanent licences and tariffs for supply are in place.

12. Given Brcko District's strategic position, any future disagreement over implementation of the Final Award would potentially have negative consequences for the stability of the Brcko District and Bosnia and Herzegovina. The Office of the High Representative will continue, therefore, to take steps to ensure that both entities fully comply with their commitments under the Final Award. The Office will also continue to monitor whether the institutions inside Brcko District are functioning effectively and apparently permanently, as required by the Final Award as a precondition to the closure of the Arbitral Tribunal.

State-level institutions of Bosnia and Herzegovina

Constitutional reform

13. There was some limited progress in the area of constitutional reform during the reporting period in the context of the implementation of the 2009 ruling by the European Court of Human Rights in the *Sejdic-Finci* case.[1] On 10 October, the Bosnia and Herzegovina Parliamentary Assembly established an Interim Joint Committee to agree amendments to implement the Court's ruling.[2] The Committee has met three times and agreed on its method of work. However, the views of the political parties on how to implement the ruling remain far apart.

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[1] On 22 December 2009, the European Court of Human Rights issued a judgement in the case of *Sejdić and Finci vs. Bosnia and Herzegovina*, which found portions of the Bosnia and Herzegovina Constitution to be discriminatory, in that citizens of Bosnia and Herzegovina who do not declare themselves as one of the three constituent peoples (Bosniaks, Croats or Serbs) are not eligible to stand for elections to the House of Peoples or the Presidency.

[2] The deadline set by the Parliamentary Assembly to prepare amendments to the Constitution is 30 November 2011, while the deadline for amendments to the Bosnia and Herzegovina Election Law is 31 December.

Presidency of Bosnia and Herzegovina

14. The Bosnia and Herzegovina Presidency continued to meet during the reporting period, holding five regular sessions and six urgent sessions. Cooperation within the Presidency has improved compared to the previous composition, although disagreements continue. Such disagreements were witnessed during the presentation of my previous semi-annual report to the Security Council on 9 May, and also in disagreements between Bosniak and Croat members on whether Bosnia and Herzegovina should endorse an independent investigation into illegal organ trafficking in Kosovo under the auspices of the Security Council. In both cases, the Presidency failed to formulate a joint position.

15. The Presidency extended the mandate for Bosnia and Herzegovina armed forces members in the International Security Assistance Force in Afghanistan. It also adopted a decision on recognition of the Interim National Council of Libya and a decision establishing diplomatic relations with South Sudan.

16. The Presidency looked into the matter of large quantities of explosives that went missing during the process of destroying surplus weapons and ammunition. It concluded that the missing explosives had not been destroyed as ordered by the Presidency, but were the subject of illegal trade between two named companies, and assigned the Bosnia and Herzegovina Ministry of Defence to address the matter.

17. During the reporting period, the Presidency continued to emphasize regional cooperation, participating in numerous regional visits including a trilateral meeting of the Heads of State of Bosnia and Herzegovina, Serbia and Turkey on 26 April in Karadjordjevo, Serbia. On 14 October, the Chair of the Presidency attended the twenty-second session of the Igman Initiative to promote regional dialogue, in Belgrade.

Council of Ministers of Bosnia and Herzegovina

18. In June, the Bosnia and Herzegovina Presidency nominated a candidate from SDP to the Chair of the Council of Ministers, but his candidacy failed to secure the necessary parliamentary support to form a government. Consequently, the Council of Ministers continued work in a caretaker capacity, adopting and sending into parliamentary procedure only a handful of laws and amendments to existing legislation, as well as enacting a number of appointments. On 30 September, the Council of Ministers adopted a revised proposal for the distribution of €96.2 million of financial assistance under the European Commission Instrument for Pre-Accession Assistance, thereby securing funds that had been put at risk by a dispute between the entities.

19. On 5 October, a dispute between the Council of Ministers and the Communications Regulatory Agency culminated in a decision by the Council of Ministers to suspend further meetings until the matter was resolved. I intervened on the matter in order to facilitate a resolution to the dispute. The Council of Ministers returned to work on 10 October.

Parliamentary Assembly of Bosnia and Herzegovina

20. Months of unsuccessful negotiations and delays in the appointment of delegates from cantonal assemblies to the Federation House of Peoples delayed both the inauguration of the Bosnia and Herzegovina House of Representatives and the

appointment of Bosniak and Croat delegates to the Bosnia and Herzegovina House of Peoples until 9 June. This delayed the formation of other working bodies of the Bosnia and Herzegovina Parliamentary Assembly and the election of parliamentary delegations.[3] As a consequence of this significant delay in the formation of the Parliamentary Assembly and ongoing political disputes within the parliament, very little legislation has been adopted since the elections of October 2010. One year after the elections, the Parliamentary Assembly has adopted only 10 laws, amending existing legislation.

Republika Srpska

21. Republika Srpska continues to combine legal and political actions challenging the State-level institutions, competencies and laws of Bosnia and Herzegovina, and the authority of the High Representative under the General Framework Agreement and relevant resolutions of the Security Council, while some of its officials make statements challenging the statehood of Bosnia and Herzegovina.

22. High-ranking Republika Srpska officials continue to use provocative, antagonistic rhetoric aimed at the State and the Bosniaks. Most recently, the Republika Srpska President asserted that the Bosniak people can only build their identity by destroying that of others.[4] These statements drew the ire of Bosniak politicians, including the Bosniak member of the Bosnia and Herzegovina Presidency, who in an open letter alluded to the possibility of future conflict should there be an attempt to divide the country.[5]

Aftermath of the decision on a referendum and conclusions of the Republika Srpska National Assembly

23. Under strong international pressure, the Republika Srpska National Assembly voted on 1 June to repeal its decision of 13 April to hold a referendum,[6] while adopting a series of conclusions intended to further interpret, amend and supplement the conclusions of 13 April. The repeal of the referendum was justified by referring to a need to respect the verbal agreement reached between the European Union High Representative for Foreign Affairs and Security Policy and the President of Republika Srpska, by which the Republika Srpska authorities would repeal the referendum decision and review the conclusions of 13 April and the European Union would open a structured dialogue on justice. While the new conclusions explain why a referendum is not needed for the time being, they do not affect the entity's claim

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[3] The inauguration of the House of Representatives was completed on 20 May 2011 and that of the House of Peoples on 9 June, while all working bodies were appointed at the end of June.

[4] "The Bosniaks are a people that exist only in Bosnia-Herzegovina and only declared themselves a people sometime around 1993 … stubbornly trying to prove their national identity, which they can only do by destroying the nationality of others — primarily, of the other constituent ethnic groups of Bosnia". (Republika Srpska President Milorad Dodik, 14 October 2011.)

[5] "[T]rue patriots will defend the territorial integrity of Bosnia and Herzegovina at any moment … Srebrenica, Bratunac, Kozarac, Brčko, Višegrad, Foča, Trebinje and other places where Bosniaks perished will never be outside the territory of Bosnia and Herzegovina." (Bosniak member of the Bosnia and Herzegovina Presidency, Bakir Izetbegovic, 18 October 2011.)

[6] The proposed referendum question had been the following: "Do you support the laws imposed by the High Representative of the International Community in Bosnia and Herzegovina, particularly those pertaining to the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina, and their unconstitutional verification in the Parliamentary Assembly of Bosnia and Herzegovina?"

that it can organize future referenda on matters that fall within the jurisdiction of Bosnia and Herzegovina or international organizations, including on the judiciary.

24. Despite the withdrawal of the planned referendum and the promise to review the conclusions of 13 April, those conclusions remain in force and were not altered by the conclusions of 1 June. They appear to be shaping the policies of the Republika Srpska authorities. For example, in June the National Assembly appointed a judge from Republika Srpska to the Bosnia and Herzegovina Constitutional Court without prior consultation with that body, as the rules of the Court require. This move seems to reflect the Republika Srpska policy — as contained in the conclusions of 13 April — to dispute the rules of the Constitutional Court.[7] In addition, at its June session, the National Assembly adopted a new Draft Law on Courts of Republika Srpska containing provisions that directly attack judicial independence, subjugate the judiciary to the executive, and undermine the responsibilities of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.[8]

25. While the immediate threat of a referendum was removed, officials of the Republika Srpska continued to assert in the media the right of that entity to call a referendum, including on secession.[9] Officials from Serbia also spoke about a hypothetical Republika Srpska referendum on secession, also in the context of comments on the future of Kosovo.[10]

Removal of the Bosnia and Herzegovina flag from Republika Srpska government building

26. The flag of Bosnia and Herzegovina was removed from in front of the Republika Srpska government building on 10 May and replaced solely by the Republika Srpska flag.

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[7] Conclusion 22 of the 29 individual conclusions that were adopted together specifies that: "The Republika Srpska National Assembly states that it is unacceptable for any Bosnia and Herzegovina judicial body to expand its competencies through its Book of Procedures."

[8] Conclusion 20 specifies that: "The Republika Srpska National Assembly demands that the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina be amended and harmonized with the Bosnia and Herzegovina constitutional order and that every level of government in Bosnia and Herzegovina have its own High Judicial and Prosecutorial Council."

[9] "I am ready for it [Republika Srpska independence] to happen after me, that isn't a problem, but I think that it will happen. I am convinced that it will happen, because it is impossible to build a country in which there is not any consensus, in which there is not any respect, in which there exists a desire for outvoting". (Republika Srpska President Milorad Dodik, 1 June.)

[10] "If tomorrow, Republika Srpska decides in a referendum to take a decision about secession, what will they be? An independent state, or will they take a decision about joining Serbia and a common life with Serbia?" These remarks followed those of the President of Serbia, Boris Tadic, at a press conference on 5 May that were widely carried in Serbia's media, in which he stated that: "Preservation of the integrity of Bosnia and Herzegovina is an issue that is also linked with the preservation of Kosovo." The Foreign Minister of Serbia, Vuk Jeremic, told the Belgrade television station B92 on 22 April that "I don't see why our support for democratically made decisions of the institutions of Republika Srpska — which are in harmony with the laws and constitution of Bosnia and Herzegovina — represents a problem for anyone".

Adoption by the Republika Srpska National Assembly of controversial police officials law

27. On 20 July, the Republika Srpska National Assembly adopted amendments to the Republika Srpska Law on Police Officials, despite written notification from the Office of the High Representative that certain provisions appear to call into question the compliance of Bosnia and Herzegovina with the letter of April 2007 from the President of the Security Council on persons denied certification. Both the European Union Police Mission and the Office of the High Representative had also raised other concerns about the amendments in writing. Specifically, the Police Mission said that several amendments may be inconsistent with the core principle of a professional, reliable and efficient police organization that is transparent and accountable. However, at a meeting on 21 September with the Office of the High Representative, the Republika Srpska Ministry of the Interior signalled willingness to demonstrate its continued compliance with the presidential letter, which was followed by another positive meeting in October.

Constitutional amendment to increase number of deputy speakers in the Republika Srpska National Assembly

28. The Republika Srpska National Assembly adopted in June a constitutional amendment increasing the number of deputy speakers in the Assembly. Whereas previously there had been two deputy speakers, there will be from two to four. The constitutional amendment was a welcome step introduced to ensure ethnic balance among the speaker and deputy speakers.

Federation of Bosnia and Herzegovina

Government formation crisis

29. Following the formation of a new Federation government on 17 March by the "Platform" Coalition of parties (SDP, SDA, HSP, NSRzB), tensions remain between this group of parties and HDZ BiH and HDZ 1990.[11] The HDZ parties were left out of the Federation government after rejecting a compromise package on government formation proposed by the international community. The HDZ parties declared for principled reasons their intention at that time to enter into opposition in the Federation. The March crisis in government formation had been precipitated by the refusal of the HDZ bloc parties in some cantons to appoint delegates to the Federation House of Peoples for several months after the constitutionally mandated deadlines had passed. The election of all delegates to the Federation House of Peoples was completed only in May, about a half a year after the deadline had passed. Tensions between these two blocs of parties were also reflected in some cantons within the Federation, and the HDZ parties continued to refer to the current Federation government as illegitimate.

Revival of Croat National Assembly

30. The extra-institutional Croat National Assembly convened on 19 April in Mostar and has served largely as a platform for HDZ BiH and HDZ 1990. It was convened to express Croat dissatisfaction over the newly appointed Federation

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[11] Details regarding the formation of the Federation government are available in the thirty-ninth report of the High Representative (see S/2011/283).

government, which — according to the Croat National Assembly — lacked legitimately elected Croats. At that meeting, the Croat National Assembly adopted a resolution demanding constitutional reform, including the option of a federal unit (third entity) with a Croat majority. On 5 May, the Presidency of the Croat National Assembly formed bodies charged with "coordinating the interests of the Croat people". At its session on 20 September, the Assembly called on the governments of cantons with Croat majorities not to accept and to challenge certain decisions by the allegedly "illegal" and "unconstitutional" Federation government. The President of HDZ 1990 subsequently clarified that the Presidency of the Croat National Assembly had ordered its members, who are also cantonal officials, to respect the Constitution, while challenging all government decisions — which they a priori deemed illegal — through the courts. Nevertheless, these events raise concerns about the risk of parallel governing structures eventually emerging. It is also worth noting that the Croat National Assembly decided to establish its presence abroad by establishing representative offices in major capitals.

Cantonal governments

31. Three of the 10 cantons in the Federation have yet to form governments. In the Herzegovina-Neretva and Central Bosnia Cantons, SDP, SDA and HDZ BiH seem to have come close to agreeing on terms that would make coalition governments possible, although final agreement has remained elusive. In July, I intervened to ensure respect for the constitutional order in the Central Bosnia Canton, after a new government took office, despite the fact that vital national interest had been invoked by the Croat caucus and the Federation Constitutional Court had not ruled on the matter. After my intervention the acting government returned to office and I believe this has also played a role in creating space for negotiations on a new government which are now well advanced. This is just one of many examples of how I have used the authority of my mandate to overcome disputes and to facilitate outcomes that are fully in accordance with the General Framework Agreement.

32. The third canton that remains without a government is Canton 10, where there is little sign of progress in reaching a political agreement, owing in large part to a dispute between HDZ BiH and HDZ 1990. Livno, the capital of Canton 10, has also been the scene of a dispute over the reconstruction of a mosque, which has the potential to raise inter-ethnic tensions in that town.

33. A court decision is pending for Posavina Canton, where the new government does function but the Bosniak caucus in the Assembly has submitted a vital national interest complaint over the fact that the new government is mono-ethnic and does not mirror the 1991 census. A similar situation exists in West Herzegovina Canton, where the Assembly decided to ignore the existence of Bosniak and Serb delegates, electing the Speaker of the Assembly in disregard of the required legal procedures.

Adoption of draft genocide denial law by the Federation House of Representatives

34. On 28 September, the Federation House of Representatives adopted a draft amendment to the Federation Criminal Code that would criminalize the denial of genocide. The draft amendment still has to undergo several steps before full adoption by the parliament. It envisages imprisonment of three months to three years in cases of denial of genocide, war crimes, crimes against humanity and other

crimes under international law. A similar initiative was proposed at the State level in August 2009, but was rejected.

Response of Federation Parliament to referendum decision of the Republika Srpska National Assembly

35. The Federation House of Representatives and House of Peoples held a special joint session on 27 April in order to define the Federation's position in relation to the referendum decision of 13 April of the Republika Srpska National Assembly and adopted a document entitled "Declaration on European and NATO Commitment". In presenting the document, the Speaker of the Federation House of Representatives said that "[w]e underline that the Federation and the Republika Srpska have the same status, i.e., that they are merely two entities in Bosnia and Herzegovina, while the state of Bosnia and Herzegovina carries sovereignty, territorial integrity and international status".

III. Public administration

36. Numerous senior civil service appointments remain long overdue at the State level.[12] The Office of the Bosnia and Herzegovina Public Administration Reform Coordinator reported to the Council of Ministers that the Public Administration Reform Strategy and its action plans have been revised and the implementation rate is now approximately 50 per cent.

37. Notwithstanding the 2010 rulings of the Federation Constitutional Court that certain articles of the Federation Law on Ministries and the entity's Law on Civil Service are not in compliance with the Federation Constitution, the Law on Civil Service has yet to be harmonized with the Constitutional Court Decision.

IV. Entrenching the rule of law

National Justice Sector Reform Strategy

38. At the sixth Ministerial Conference on the implementation of the Justice Sector Reform Strategy in Bosnia and Herzegovina for the period from 2008 to 2012, convened on 26 July 2011, stakeholders supported the initial recommendations of the first session of the European Union structured dialogue. At that session, the European Commission had highlighted that the Justice Sector Reform Strategy addressed many issues that are relevant to the future European integration of Bosnia and Herzegovina, and called upon all parties to reinforce their coordination and cooperation in implementing the Strategy. The participation of the entities' Ministries of Justice in implementing the Strategy remains inadequate.

39. In terms of implementation of the Justice Sector Reform Strategy, the overall breakdown includes a total of 204 activities (within 61 programmes) that should

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[12] Including the appointment of a new Head of the Communications Regulatory Agency (more than three years overdue), members of the Communications Regulatory Agency Council (a year and a half overdue), and the General Manager of the Company for the Transmission of Electric Power in Bosnia and Herzegovina (one year overdue). The Acting Head of the Indirect Tax Authority has been appointed on a temporary basis twice, in violation of applicable laws.

have been implemented between January 2009 and June 2011. Of these, 45.1 per cent were fully implemented, 31.9 per cent partially implemented and 23 per cent not implemented. However, these numbers are misleading as most of the claimed successes were either of lesser importance or were actually achieved by the High Judicial and Prosecutorial Council.

40. The Ministerial Conference noted that answers to the European Union structured dialogue questionnaire would be compiled in one document, but that it was agreed that the document would include separate positions of the Republika Srpska, relating to State-level judicial institutions and the High Judicial and Prosecutorial Council. This reflects the Republika Srpska position that the State-level Court of Bosnia and Herzegovina, and therefore also the State-level Prosecutor's Office of Bosnia and Herzegovina, are unconstitutional, and that the Court's present jurisdiction is unconstitutional. The Republika Srpska continues to present this position, in spite of two rulings by the Bosnia and Herzegovina Constitutional Court (2002 and 2009), confirming the constitutionality of the Court of Bosnia and Herzegovina and its jurisdiction. The Republika Srpska position is that the judicial council should be split from the prosecutorial council, and that such councils should be established at the entity level. The position seeking to re-establish entity level councils disregards the Agreement on Transfer of Certain Entities' Responsibilities through Establishment of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, signed in March 2004 by the Republika Srpska government, the Federation government and the Bosnia and Herzegovina Council of Ministers.

War Crimes Prosecution Strategy

41. Implementation of the War Crimes Prosecution Strategy remains slow, fuelling public criticism of insufficient progress in prosecuting war crimes. On the positive side, a database has been established, and categorization and determination at which level — State or entity — identified war crimes cases shall be investigated and/or tried is under way.

Other rule of law issues

42. The Federation Constitutional Court still lacks three out of nine judges, which means that the Vital Interest Panel of the Federation Constitutional Court has been incapacitated for over three years, thereby affecting the protection of constituent peoples in the decision-making process in the Federation. The High Judicial and Prosecutorial Council adopted its final proposal on the list of qualified candidates on 23 September 2011, and the procedure is now with the President of the Federation, who with the concurrence of the two vice-presidents needs to nominate candidates to the Federation House of Peoples for appointment.

43. Although the total number of international judges in the War Crimes Department of the Court of Bosnia and Herzegovina was planned to drop from four to three, the mandate of one judge was prolonged until 2012 because of her involvement in a war crimes trial that cannot be completed sooner.

44. The integration of the Registries of the Court of Bosnia and Herzegovina and of the Prosecutor's Office of Bosnia and Herzegovina into domestic institutions continued to lack the necessary support of the Bosnia and Herzegovina Ministry of Justice and Ministry of Finance and Treasury. Additional premises, updating of the computer system, regulating the status of the Court police and completion of the

integration into the Ministry of Justice of the Criminal Defence Service remain essential steps that need to be addressed.

High Judicial and Prosecutorial Council working group

45. The High Judicial and Prosecutorial Council's working group tasked to draft amendments to the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina continues its work, concentrating on the composition of the Council, election of its members, and appointment and discipline of judges and prosecutors. While there was no indication that the plan of the Bosnia and Herzegovina Ministry of Justice to wait for the Council's initiative on amendments and then to appoint a new, more restricted working group to prepare the final text of the amendments to be submitted to the Council of Ministers was changed, there are signs that the High Judicial and Prosecutorial Council does not want to send the amendments into parliamentary procedure in the current political atmosphere.

Fight against corruption

46. The suspension by the High Judicial and Prosecutorial Council of the Bosnia and Herzegovina Chief Prosecutor amid a corruption scandal regarding the alleged illegal export of arms and ammunition demonstrated the Council's capacity to react in disciplinary cases. However, the scandal may also have seriously undermined citizens' trust in the Bosnia and Herzegovina judiciary. The suspension was pronounced on 1 July by the Disciplinary Commission of the High Judicial and Prosecutorial Council and further confirmed after appeal on 8 July. In October, it was reported that the Disciplinary Counsel had reached a plea agreement with the suspended Chief Prosecutor, by which he admitted previously denied contacts with certain individuals, in exchange for accepting a more junior position within the District Prosecutors' Office of Banja Luka in the Republika Srpska.

New obstacles to judicial independence

47. On 26 August, the President of Republika Srpska, on his own behalf and that of the Serb member of the Bosnia and Herzegovina Presidency, sent an invitation to persons from the Republika Srpska working in the State-level institutions to a meeting with the leadership of their political party, the Alliance of Independent Social Democrats. The announced agenda of the meeting was "current political activities on the level of the joint authorities of Bosnia and Herzegovina, trends and tasks during the mandate duration, realization of and deviations from the Dayton Peace Accord and the positioning of Republika Srpska". The list of invitees included judges and prosecutors in the High Judicial and Prosecutorial Council coming from Republika Srpska, as well as the President and a judge of the Bosnia and Herzegovina Constitutional Court. The majority of the invited judges and prosecutors did not attend. This caused the Republika Srpska President to threaten publicly that those State-level judicial officials would not be reappointed.[13]

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[13] "No one from the Bosnia and Herzegovina High Judicial and Prosecutorial Council came, along with the Constitutional Court President. The President of the Constitutional Court was elected by the Republika Srpska National Assembly and a person elected by the Republika Srpska National Assembly must have responsibility towards the Republika Srpska. In case they do not justify their absence from this meeting they will be considered as disqualified." (Republika Srpska President Milorad Dodik, 4 September 2011.)

48. At its session in June, the Republika Srpska National Assembly adopted the new Draft Law on Courts of Republika Srpska at the first reading. The draft contains provisions that undermine the independence of the judiciary from the executive. The High Judicial and Prosecutorial Council, the Republika Srpska Association of Judges and the Organization for Security and Cooperation in Europe (OSCE) have submitted comments on the draft law, expressing concerns.

Public security and law enforcement

49. The ongoing initiative to update current legislation on internal affairs at the Federation and cantonal levels has stalled, owing to disagreements between police authorities and Ministers of the Interior. On 15 June, cantonal Ministers of the Interior prepared alternative draft legislation that appears to reintroduce unacceptable levels of political control over the work of the police. The Federation and cantonal police commissioners want increased legal and budgetary independence for operational policing matters along the lines of the long-term reforms originally initiated by the International Police Task Force.

50. On 14 April 2011, the Bosnia and Herzegovina Council of Ministers adopted amendments to the Bosnia and Herzegovina Law on Police Officials to permit the Directorate for Police Coordination to employ active police officials directly from other police bodies in Bosnia and Herzegovina until 31 December 2012 and forwarded the amendments to the Bosnia and Herzegovina Parliamentary Assembly for procedure. This temporary exemption from normal employment procedures could result in accelerated recruitment of new staff in the Directorate.

51. In parallel to the process described above, a working group composed of the European Union Police Mission, the Office of the High Representative, the International Criminal Investigative Training Assistance Program and representatives of the State, entity, cantonal and Brcko District authorities has reviewed the Laws on Police Officials currently in force at State, entity, cantonal and Brcko District levels. The European Union Police Mission is preparing a report on the working group's meetings for presentation to working group representatives at the next meeting, tentatively scheduled for mid-October 2011. The Republika Srpska Ministry of the Interior did not officially join the working group but attended sessions in the capacity of observer.

V. Cooperation with the Tribunal

52. With the arrest of Ratko Mladic on 26 May, all persons indicted by the International Tribunal for the Former Yugoslavia in relation to war crimes committed in Bosnia and Herzegovina have been apprehended. Mladic had been a fugitive since his indictment on 25 July 1995. A number of protest rallies were organized in the Republika Srpska in response to Mladic's arrest. As Mladic was the last remaining fugitive accused of crimes related to the Bosnian war, I lifted all remaining bans on officials related to non-cooperation with the Tribunal on 10 June. During the reporting period, the cooperation of Bosnia and Herzegovina with the Tribunal remained satisfactory, although local institutions showed a less than dedicated approach to ensuring that individuals responsible for war crimes serve

their sentences, as shown in four major cases of escape from the territory of Bosnia and Herzegovina.[14]

VI. Reforming the economy

Economic indicators[15]

53. Certain economic indicators for the first six months of 2011 show signs of improvement. Compared to the same period in 2010, exports increased by 20.5 per cent and imports by 18.2 per cent, which has caused a 15.9 per cent increase in the total foreign trade deficit. Total industrial production in Bosnia and Herzegovina rose by 7.7 per cent (5 per cent in the Federation and 3.6 per cent in the Republika Srpska). The average net salary in Bosnia and Herzegovina amounted to KM 813, an increase of 2.4 per cent compared to the same period in 2010, while the average pension amounted to KM 336, a 0.9 per cent decrease. Annual inflation was estimated at 3.6 per cent. At the same time, unemployment and investments remain worrisome: registered unemployment at the end of June 2011 was estimated at more than 527,000 people, approximately 43 per cent of the workforce, while foreign direct investments in the first half of 2011 decreased by 19.5 per cent over the same period in 2010.

54. On 16 May, Moody's Investors Service lowered the credit rating outlook of Bosnia and Herzegovina from stable to negative, which could downgrade the country's credit rating of B2 in the next 12 to 18 months. The decision is based on the assessment that the political situation in the country is deteriorating.[16] Standard & Poor's took a similar decision on 28 July.[17]

Indirect taxation system

55. The Governing Board of the Indirect Taxation Authority (ITA) met four times in the past six months. Building on the meeting of 22 July, which resulted in an

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[14] Radovan Stankovic, sentenced to 20 years' imprisonment by the Court of Bosnia and Herzegovina for crimes against humanity committed in 1992 in Foca, escaped from prison in Foca in May 2007 with the assistance of local authorities. He remains at large. His case was the first to be transferred by the Tribunal to the Court of Bosnia and Herzegovina. Three other individuals sentenced for crimes against humanity by the Court of Bosnia and Herzegovina remain at large. Two indictees, sentenced to 13 years and 17 years respectively, escaped in May 2009 and May 2010 while under prohibitive measures awaiting delivery of their final verdicts. In December 2010 a fourth accused escaped just before a first instance sentence of 27 years' imprisonment for crimes against humanity against him was to be rendered.

[15] *Sources*: Bosnia and Herzegovina Economic Planning Directorate, Statistics Agency, Foreign Trade Chamber, Ministry of Foreign Trade and Economic Relations.

[16] Moody's assigned the first credit rating to Bosnia and Herzegovina on 29 March 2004 (B3 with positive outlook), upgrading it on 17 May 2006 to B2 with stable outlook as a result of the 2004-2006 reforms and achievements strengthening the country's political and economic stability. The Moody's decision of 16 May 2011 to change the credit rating outlook from stable to negative is the first rollback in the credit rating history of Bosnia and Herzegovina as assigned by Moody's.

[17] Standard & Poor's assigned its first credit rating to Bosnia and Herzegovina on 22 December 2008 (B+ with stable outlook), confirming it on 8 December 2009. The Standard & Poor's decision of 28 July 2011 to change the credit rating outlook from stable to negative is, therefore, the first rollback in the credit rating history of Bosnia and Herzegovina as assigned by Standard & Poor's.

agreement on new indirect tax revenue allocation coefficients applicable to the third quarter of 2011,[18] the Governing Board made further progress at its session on 7 September. At that session, the Governing Board — on the basis of a temporary rebalancing of the collected and distributed indirect tax revenue — agreed on debt settlement for 2008, 2009 and the first six months of 2010 and 2011. Under the agreement, which took effect on 14 September and will be implemented by the end of November 2011, the Federation would repay approximately KM 33.8 million to the Republika Srpska.[19] While the second half of 2010 remains disputed and continues to cause tension between the entities,[20] the issue will probably be addressed in the forthcoming period, following an additional analysis of the relevant data by the Governing Board's Final Consumption Unit.

56. The Republika Srpska continues to challenge the indirect taxation system, including the State's competence for indirect taxation. At the session of 10 May of the ITA Governing Board, the Republika Srpska Finance Minister called for the breakup of the single account and the introduction of entity jurisdiction over indirect tax revenue collection. At meetings with the Office of the High Representative on 10 June, the Republika Srpska Prime Minister and Finance Minister both advocated a split of the single account into three parts — Federation, Republika Srpska, Brcko District — and the financing of the State through lower-level transfers. On 9 September,[21] the Republika Srpska Prime Minister repeated his demand for the creation of separate sub-accounts for the collection of indirect tax revenue. He also described the existing fiscal structure of Bosnia and Herzegovina as unsustainable and called for a new one. In an interview on 5 September, the Republika Srpska President[22] stressed that the system of indirect taxation in Bosnia and Herzegovina had been imposed contrary to the Constitution and that the Republika Srpska would "take decisions questioning the functioning of the system".[23]

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[18] This is only the second time in the past three years that the ITA Governing Board has complied with its obligation under the 24 June 2008 *Rulebook on Coefficient Calculation and Payments to the Entities*, which clearly states that new coefficients should be agreed on a quarterly basis.

[19] The debt results from the ITA Governing Board's failure to adjust indirect tax revenue allocation coefficients to the entities' final consumption on a quarterly basis, as provided for in the 24 June 2008 *Rulebook on Coefficient Calculation and Payments to the Entities*. In the absence of the required adjustments, the coefficients agreed on 24 June 2008 were applied for over two years.

[20] The Federation requested an explanation for a significant increase in the Republika Srpska final consumption in the second half of 2010, which led to the increase in the calculated allocation coefficient for the Republika Srpska and thus to the amount claimed by the Republika Srpska from the Federation. Doubts over the data in question were also expressed by the ITA Governing Board's Final Consumption Unit. The Federation government expressed its willingness to settle any debt for this period following verification of the data.

[21] *Glas Srpske* of 9 September 2011.

[22] *OBN, Telering* programme of 5 September 2011.

[23] Contrary to these claims, the indirect taxation system was established in line with the Bosnia and Herzegovina Constitution. The transfer of competence for indirect taxation to the State and the conclusion of the corresponding Transfer Agreement were approved by the Republika Srpska National Assembly on 30 October 2003 and by the Federation Parliament on 3 December 2003. Following this approval, the two entity Prime Ministers signed the Transfer Agreement on 5 December 2003 and then both Houses of the Bosnia and Herzegovina Parliamentary Assembly adopted the Law on Indirect Taxation System on 29 December 2003. Any challenge to the existing system of indirect taxation would, therefore, represent a rollback on a previously agreed reform that could negatively affect the financing of the State — since it would make it de facto dependant on entity transfers as in the pre-indirect taxation system reform state of affairs. Such changes would also affect the financing of Brcko District, which is dependant on the existing system of indirect taxation on the basis of the High Representative's decision of 4 May 2007.

Challenges to the fiscal sustainability of State institutions

57. Entity disputes within the ITA Governing Board have spilled over to the Bosnia and Herzegovina Fiscal Council, which had not met since February before finally convening on 12 October. A Global Framework of Fiscal Balance and Policies in Bosnia and Herzegovina for the period 2011-2013 has still not been adopted.[24] In its absence, international financial disbursements, including the European Union Macro-Financial Assistance, remain on hold. This increases pressure on the entities and forces them to seek alternatives — such as resorting to borrowing — to cover budget deficits and meet their financial commitments. In addition to this, the Republika Srpska Prime Minister reiterated on 26 July[25] his earlier claims[26] that the Republika Srpska is one of the two co-founders of the Central Bank of Bosnia and Herzegovina and that it has a right to its profits, and called for Central Bank profits to be split between the Republika Srpska and the Federation and not paid to State institutions, as the State "had not contributed to the initial founding capital of the Central Bank of Bosnia and Herzegovina and was therefore not its founder".[27]

58. On 14 July, the 2011 State budget proposal failed to receive the required entity majority from delegates elected from the Republika Srpska and was rejected by the Bosnia and Herzegovina House of Representatives. The Bosnia and Herzegovina Ministry of Finance and Treasury revised the previous budget proposal and submitted it to the Presidency for a new procedure. Although the proposal takes into account the interests of both the State and the entities and is in line with the principles agreed at the joint meeting of the State and entity Finance Ministers in Vlasic held on 13 July (attended by representatives of the Office of the High Representative and the European Union), it has not been considered to date because of indications that the Republika Srpska will continue to oppose it. In the absence of a budget, the State institutions are forced to remain on restrictive temporary financing, which not only affects their ability to meet their legal obligations and integration requirements, but also jeopardizes their financial sustainability.

59. Statements by senior Republika Srpska officials indicate that they will continue to oppose budget proposals which would secure for the State institutions the revenues needed at least to maintain the same budget level and the same level of operations as in 2010. Federation officials have also declined so far to support the State's requested share of disbursements from the single account for the 2012

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[24] Although this document should have been adopted by the end of May 2010 to allow for the preparation of 2011 budgets at all levels, it has not been agreed to date due to a disagreement between the entities and the State on the State's share in indirect tax revenue in 2011.

[25] Media statement by Republika Srpska Prime Minister Aleksandar Dzombic on 26 July 2011, as reported by the Republika Srpska News Agency.

[26] Media statements by Republika Srpska Prime Minister Aleksandar Dzombic reported, among others, by ONASA (Independent News Agency) on 30 April 2011, the Republika Srpska News Agency on 9 May 2011, and BLIC on 12 May 2011.

[27] The Central Bank of Bosnia and Herzegovina was explicitly provided for in annex 4 of the General Framework Agreement as the sole authority for issuing currency and for monetary policy throughout Bosnia and Herzegovina, whose responsibilities shall be determined by the Bosnia and Herzegovina Parliamentary Assembly. The 1997 Law on the Central Bank further specifies that the Central Bank shall be entirely independent from the Federation, the Republika Srpska, any public agency and any other authority in the pursuit of its objective and the performance of its tasks, while the 2005 Amendments to the Law regulate the manner of the allocation of Central Bank net profits, including payments on this basis to the State budget.

budget. It has also been announced that a report on the financial aspects of the functioning of the Bosnia and Herzegovina institutions is being prepared by the Republika Srpska government for debate by the Republika Srpska National Assembly. In the light of these developments, there is growing concern that the budget is being used to challenge the institutions and competencies of the State. In line with my mandate, this is a matter I take very seriously.

Ongoing obstruction of the Bosnia and Herzegovina electricity transmission company

60. The entities continued to disagree on issues related to the management of the Bosnia and Herzegovina electricity transmission company (TRANSCO)[28] which is still grappling with the problems following from two earlier attempts by Republika Srpska authorities and representatives in the company to unilaterally dissolve it (in 2008 and 2009).

61. The State Electricity Regulatory Commission warned TRANSCO about the ongoing stalemate in the adoption of investment plans (since 2008) and the absence of investment despite TRANSCO investment funds accumulating to over KM 200 million. It also warned TRANSCO about its refusal to connect new customers to the transmission network and the negative consequences of employee lawsuits triggered by the General Manager's non-compliance with the company's statute. As a consequence of the latter, the company has thus far paid KM 17.4 million in damages, which makes about 83 per cent of TRANSCO's total debt (KM 21 million).[29] New appointments are also blocked, and all of the company's management and most of its Management Board are still in a caretaker mandate (the General Manager since September 2009). Moreover, the company no longer has an Audit Board. This, among others, affects the Company's audit for 2010, as the TRANSCO statute calls for completing an independent audit within 120 days of the end of the previous fiscal year (end of June) and the auditor for 2010 was selected only at the end of July 2011.

62. In addition, threats of unilateral action re-emerged on 12 October, when the Republika Srpska government reportedly adopted a conclusion announcing the establishment of a Republika Srpska electricity transmission company if the problems in TRANSCO were not resolved by the end of the year. Regrettably, the Republika Srpska authorities have so far failed to provide my office with the text of that conclusion.

63. Despite these problems, the electricity transmission network is being maintained and "the company is showing good business results".[29]

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[28] TRANSCO was established by the *Law Establishing the Company for the Transmission of Electric Power in Bosnia and Herzegovina*, which was adopted by the Bosnia and Herzegovina Parliamentary Assembly in 2004 following the 2003 agreement between the two entity Prime Ministers on the basis of article III.5(b) of the Bosnia and Herzegovina Constitution.

[29] 10 August 2011 report, as sent to the Bosnia and Herzegovina Ministry of Foreign Trade and Economic Relations by TRANSCO Acting General Manager Dusan Mijatovic.

VII. Return of refugees and displaced persons

64. Implementation of the Annex 7 Strategy remained slow during the reporting period. There is a particular need to address the living conditions of the remaining 8,600 internally displaced persons in collective centres and to create durable housing solutions. This is the most vulnerable group of the approximately 113,000 internally displaced persons who remain.

65. A UNHCR envoy, appointed early in 2011 to work on the protracted displacement situation in the Western Balkans, visited Bosnia and Herzegovina and the region numerous times in 2011 to support the governments in devising a regional programme for durable solutions for the most vulnerable. Bosnia and Herzegovina plays an important role in this process, with the Ministry for Human Rights and Refugees serving as the regional coordinator. The Bosnia and Herzegovina component of the regional programme complements the revised Annex 7 Strategy, which will be presented at a donors conference in 2012. The Office of the High Representative will continue to support the efforts of the UNHCR office in Bosnia and Herzegovina to ensure full implementation of annex 7.

VIII. Media development

66. There has been no progress in implementing the public broadcasting legislation adopted in January 2006. On the contrary, the three public broadcasters constituting the system continue to disagree on the system's very structure. Consequently, the Board of Governors of the Public Broadcasting System failed to adopt the statute to establish the Corporation, which is crucial for the switchover to the digital terrestrial signal, a task which Bosnia and Herzegovina institutions hoped to complete in 2012. The Bosnia and Herzegovina Parliamentary Assembly has not appointed new governors for the Public Broadcasting System, even though the mandate of several current governors is expired. The Communications Regulatory Agency is still functioning with an acting Director General and a Council whose mandate has expired. This situation is affecting the Agency's credibility and its operations.

67. From January until September 2011, attacks against the media increased 30 per cent compared to the same period in 2010. The Free Media Helpline, a service operating within the Bosnia and Herzegovina Union of Journalists, registered 42 cases of threats and pressures, physical attacks, denial of information, mobbing, and one case of a death threat.

IX. Mostar

68. The Mostar authorities elected in 2008 continue to struggle to build on the progress made between 2004 and 2008 with the assistance of the Office of the High Representative in integrating the city. After a notable delay, a ruling of the Bosnia and Herzegovina Constitutional Court requiring limited changes to the electoral system for Mostar finally entered into force on 16 June. The deadline for the Bosnia and Herzegovina Parliamentary Assembly to adopt the necessary changes to the Election Law expires on 16 December. No progress has been made on this issue

during the reporting period. My Office will be working to facilitate agreement in the months ahead.

X. Defence reform

69. On 19 May, the Chair of the Bosnia and Herzegovina NATO Coordination Team tabled a proposal for the Team's consideration, calling for the ownership and registration of prospective immovable defence properties on behalf of Bosnia and Herzegovina. Although not required by the Law on Defence of Bosnia and Herzegovina for the transfer of non-prospective defence properties to municipal authorities, the proposal was an attempt to reaffirm the commitment of Bosnia and Herzegovina to fulfil all conditions for the activation of the NATO Membership Action Plan. In spite of this proposal, there has been no breakthrough and the responsibility to act continues to rest primarily with the Bosnia and Herzegovina Council of Ministers and entity governments.

70. On 28 April, and in line with a request from both the Bosnia and Herzegovina Presidency and the Bosnia and Herzegovina Minister of Security, the United States Embassy, OSCE and the United Nations Development Programme co-signed and forwarded a set of recommendations for improving the weapons export regime to the Ministry of Foreign Trade and Economic Relations.[30] On 11 May, the Council of Ministers agreed to support an addendum to the instruction on terms and procedure for the issuance of permits for foreign trade exchange of goods and services of strategic importance for the safety of Bosnia and Herzegovina.[31]

71. The Bosnia and Herzegovina Minister of Foreign Trade and Economic Relations has since inserted the addendum to the Law on Control of Foreign Trade Exchange of Goods and Services of Strategic Importance for the Safety of Bosnia and Herzegovina. As a consequence, the Bosnia and Herzegovina Presidency ban on weapons exports no longer applies.

XI. Intelligence reform

72. The Bosnia and Herzegovina Intelligence-Security Agency came under severe public pressure on several occasions during the reporting period.

73. Of further concern, at its session on 18 August, the Republika Srpska government decided to initiate the drafting of a Republika Srpska Law on Protection of Secret Data. The Bosnia and Herzegovina Law on Protection of Secret Data assigns exclusive authority for the protection of secret data with the State of Bosnia and Herzegovina. An attempt by an entity authority to regulate this area would be

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[30] As a reminder, on 17 March, the Bosnia and Herzegovina Presidency adopted a decision calling for revised criteria in the country's licensing regime for export of weapons and ammunition following (unconfirmed) suspicions of arms exports to questionable recipients. This in effect halted all exports of weapons and ammunition from Bosnia and Herzegovina.

[31] The addendum requires the Ministry of Foreign Trade and Economic Relations to request the Intelligence-Security Agency to conduct security checks of involved parties prior to an export approval. The Council of Ministers also requested closer cooperation between the institutions participating in the procedures of foreign trade of weapons and military equipment as well as appealing for appropriate training of relevant civil servants and industry employees.

difficult without conflicting with the State law and State-level institutions assigned to oversee its implementation.

74. On 25 August and 14 September, the Bosnia and Herzegovina House of Representatives and the Bosnia and Herzegovina House of Peoples respectively adopted the Annual 2011 Intelligence-Security Policy Platform. The Policy Platform is a set of guidelines that are required for the effective planning, execution and delivery of the legally prescribed tasks of the Intelligence-Security Agency. This was the first such document to have successfully passed both the executive and legislative branches since the Agency's establishment in 2004.

XII. European Union military force

75. The European Union military force (EUFOR) continued to assist the Office of the High Representative and other international organizations to fulfil their respective mandates. Preparations are under way to continue the executive presence of EUFOR beyond 2011. I consider it important for a United Nations-mandated executive military presence to be retained.

XIII. European Union Police Mission

76. The European Union Police Mission has continued to support the development of law-enforcement agencies in Bosnia and Herzegovina in the fight against organized crime and corruption. The Mission has continued work on harmonizing the legal framework for police and supported further implementation of the police reform laws of April 2008, through its mentoring of the Directorate for Police Coordination. The current mandate of the Mission expires on 31 December 2011. European Union member States have carried out a review on the future of the Mission and will decide late in 2011 how the European Union can best continue to support the law enforcement and criminal justice sectors in Bosnia and Herzegovina.

XIV. European Union Special Representative

77. From 1 May to 31 August, in my role as European Union Special Representative, I continued to coordinate the various European Union missions on the ground. In line with my mandate as European Union Special Representative, I have offered local political guidance to EUFOR and the Police Mission. Cooperation with the European Union delegation and member States has also been intense. I handed over my mandate as European Union Special Representative on 1 September to Peter Sørensen, the new head of the European Union delegation and the new European Union Special Representative.

XV. Future of the Office of the High Representative

78. The Peace Implementation Council Steering Board met at the level of political directors on 6 and 7 July. It once again expressed its concern over the political situation in the country, the failure to appoint a State government, as well as the

ongoing failure to address the remaining objectives and conditions for the closure of the Office of the High Representative. The next meeting is tentatively scheduled for 12 and 13 December.

79. Owing to the decoupling of the position of European Union Special Representative from the Office of the High Representative, 26 highly valuable staff members have transferred to the office of the European Union Special Representative. In addition to this, the overall budget of the Office of the High Representative has been reduced for the current budget year, the ninth such reduction in the past 10 years.

XVI. Reporting schedule

80. In keeping with the proposals of my predecessor to submit regular reports for onward transmission to the Security Council, as required by Security Council resolution 1031 (1995), I herewith present my sixth regular report. Should the Secretary-General or any Security Council member require information at any other time, I would be pleased to provide an additional written update. The next regular report to the Secretary-General is scheduled for May 2012.